IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.356-MA of 2005
Date of Decision: November 27, 2006

Gulzar Singh son of Jagir Singh, resident of Q.No.64, Type-I, Power Colony, Anandpur Sahib, Tehsil Anandpur Sahib, District Ropar.

.....Appellant

VERSUS

1.Nachhattar Singh son of Shri Bachan Singh, resident of Q.No.4-D, Ganguwal, Tehsil Anandpur Sahib, District Ropar (since dead).

2.Jaspal Singh son of Kehar Singh, aged 53 years, Government Employee, resident of H.No.65-CC, Nangal Township, District Ropar.

3.Gurmit Kaur wife of Jaspal Singh, aged 46 years, Housewife, resident of H.No.65-CC, Nangal Township, District Ropar.

4.Tarsem Kaur wife of Gurmail Singh, aged 40 years, Government Employee, resident of Mohalla Fatehgarh, Anandpur Sahib.

.....Respondents

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr. Amit Rana, Advocate for
Mr.Ranjan Lakhanpal, Advocate
for the appellant.

Mr.KK Aggarwal, Senior Advocate with
Mr.Kapil Aggarwal, Advocate
for the respondents.

R S MADAN, J.

By this order we propose to dispose of Criminal Misc.No.356-MA of 2005, which has arisen out of the judgment dated

25-02-2005 rendered by the Chief Judicial Magistrate,Ropar in a complaint case No.RT-159 of 09-03-1991/31-08-2003 filed by the appellant-Gulzar Singh against the respondents under Sections 323, 324, 325, 352, 504 and 506 read with Section 34 of the Indian Penal Code and Sections 197, 199, 200, 210, 217 and 218 read with Section 34 of the Indian Penal Code and Section 120-B of the Indian Penal Code whereby he convicted and sentenced accused-Jaspal Singh to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- under Section 325 of the Indian Penal Code, in default of payment of fine to further undergo rigorous imprisonment for a period of one month. He was further sentenced to undergo rigorous imprisonment for a period of three months under Section 323/34 of the Indian Penal Code. Both the sentences were ordered to run concurrently. As far as Tarsem Kaur is concerned, she was given the benefit of Probation of Offenders Act on her furnishing probation bonds in the sum of Rs.3,000/- with one surety in the like amount for a period of one year. Accused-Gurmit Kaur was acquitted of the charge framed against her.

During the pendency of the complaint, accused Nachhatter Singh has died and consequently the proceedings stood abated qua him.

In brief the facts of the complaint are that accused-respondents were relatives of the complainant from the side of his wife, who were not maintaining good relations with the complainant for several years. Accused No.1 was bent upon humiliating the complainant and his wife and he wanted to degrade the complainant and his wife in the eyes of his relatives, friends and other persons. In order to achieve this design, respondents No.1 to 4 came to see the complainant and his wife at their

residence at Q.No.64,Type-I, Power Colony, Anandpur Sahib on 17-02-1991 at about 5.30 P.M. They sent chowkidar of the colony Kanwal Nain to call the complainant and his wife. The wife of the complainant went to accused-respondents, who were standing in front of the house. They started abusing the wife of the complainant and beaten her with fist and blows. She raised hue and cry and on hearing the noise, the complainant was attracted to the seen of occurrence and asked his wife to return to the house but all the accused pounced upon the complainant and gave him beating as well as abused him. Both the complainant and his wife ran towards their house to save themselves. In the meantime, accused-Jaspal Singh hurled a stone at the complainant causing bone injury. Accused-Nachhattar Singh beaten the complainant with blows and caused injury on the right eye of the complainant. Accused-Tarsem Kaur caused injury on the right elbow of the complainant by pushing him on the stair case. Accused-Gurmit Kaur caused injury on the left hand ring finger with teeth bite. The wife of the complainant was also beaten by accused-Jaspal Singh, Tarsem Kaur and Gurmit Kaur with fist blows and hurled abuses. On raising alarm, 20-25 persons were attracted to the site of the occurrence. They were Kulwant Singh son of Dalip Singh of VillageMataur, Nikku Ram son of Kirpu Ram and Fatehdin of Village Jajjar, Tehsil Anandpur Sahib. Soon thereafter, the complainant and his wife went to Civil Hospital,Anandpur Sahib for medical aid. The wife of the complainant and witness Kulwant Singh approached Dr.Hardp Kaur at her residence at aout8.00 P.M. on 17-2-1991 but she refused to provide medical aid unless the matter is reported to the police. The complainant's wife and witness Kulwant Singh went to the police station, but the police officials present there asked them to come on

the following day. No medical aid was provided to the complainant and his wife on 17-2-1991 inspite of admitting the complainant in the hospital. On 18-2-1991, Dr. Hardip Kaur started the treatment of the complainant after getting the fee deposited in the bank at about 11.00 A.M. She, however, prepared wrong medical report malafidely with back date as 17-2-1991 instead of 18-2-1991. The complainant was advised X-ray and the X-ray was conducted by accused RK Bhatia, Radiographer, Civil Hospital, Anandpur Sahib. The complainant was discharged on 19-2-1991. Thereafter, the complainant moved application for re-examination before the Court, which was allowed and the complainant was re-examined and the bone fracture was found in the X-ray report, conducted at Civil Hospital, Ropar and the complainant was discharged from the Civil Hospital, Ropar on 07-03-1991. Thereafter, the complainant approached the local police for taking action against the accused persons but on refusal by the police, the present complaint was filed against the accused.

After the preliminary evidence was recorded, the respondents were summoned to face trial for the offences punishable under Sections 325, 323 and 504 read with Section 34 of the Indian Penal Code. Thereafter, the accused appeared in the Court and were released on bail. Accused-Nachhattar Singh, however, expired during the pendency of the appeal.

In pre-charge evidence, the complainant examined PW1-Pirthi Singh,Clerk, Civil Hospital, Ropar; PW2-Gulzar Singh, complainant; PW3-Kulwant Singh; PW4-Malkiat Kaur wife of Gulzar Singh, complainant; PW5-Gurmail Singh, Junion Assistant; PW6-Radha Kishan Bhatia; PW7-Dr.Hardip Kaur; PW8-Dr.Raman Nijhawan, Radiologist, Civil

Hospital, Mohali and PW9-Dr.Rajnish Sood.

After the pre-charge evidence, Jaspal Singh, Gurmeet Kaur and Tarsem Kaur were charge-sheeted under Sections 325, 323 and 506 read with Section 34 of the Indian Penal Code, to which they pleaded not guilty and claimed trial. The witnesses of the complainant were further cross-examined.

After the evidence of the complainant was closed, the statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, in which the entire incriminating evidence was put to them, to which they denied and pleaded false implication.

In defence, the accused tendered copies of various judgments of the cases filed by the complainant against various persons.

After evaluating the evidence led by the complainant, the Court convicted accused-Jaspal Singh and Tarsem Kaur as mentioned in the earlier part of the judgment and acquitted accused-Gurmit Kaur on the ground that medical examination conducted by the lady doctor did not find any teeth bite. Dr.Hardip Kaur, who medically examined the complainant did not find any bite marks on his finger and, as such, her presence was held to be doubtful at the spot.

Heard.

The complainant through this present Criminal Misc. No.356-MA of 2005 sought leave to appeal against the order of acquittal against Gurmet Kaur for the simple reason that she too has participated in the occurrence but the learned trial Court fell in error in recording the order of acquittal in her favour on the ground that Dr.Hardip Kaur, who medically examined the complainant, did not notice the bite marks on the finger of the

left hand of the complainant. It is not disputed that there is a long litigation between the parties prior to the present occurrence.

It is normally the tendency of the complainant party to rope the relations of the respondents to settle his own score as the case set up by the complainant in the complaint is that he had no cordial relations with the respondents-accused. The ocular version of the complainant does not co-incise with the medical evidence brought on the record. Therefore, the learned Chief Judicial Magistrate, Ropar was justified in acquitting accused-Gurmit Kaur by observing that her presence at the spot appears to be doubtful.

Learned counsel for the appellant was unable to convince us that the Chief Judicial Magistrate, Ropar misconstrued, mis-interpreted the prosecution evidence and has perversely recorded the findings of acquittal.

In this view of the matter, no ground for leave to appeal is made out and the same is hereby declined.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

November 27, 2006
jt